

NUNC PRO TUNC

AUG 18 2008

TONY MABRY
CSP-CALIPATRIA
P.O. BOX 5004
CALIPATRIA, CA. 92233
CDC NO. D-90450

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TONY MABRY

V

(WARDEN) LARRY SMALLS

CIV. NO. 08-CV-0965 BEN (LSP)
MOTION & DECLARATION FOR
APPOINTMENT OF COUNSEL: PURSUANT
TO: COHEN/COOPERS FACTOR:
18 USC 3006 (A)
AFTER PREVIOUS DENIAL IN DISTRICT
COURT.

FILED

AUG 26 2008

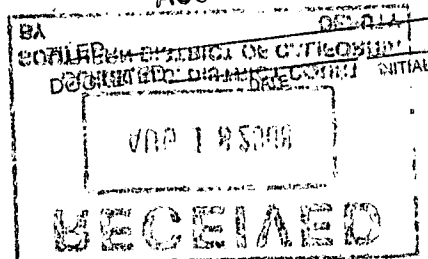
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY LMA DEPUTY

PETITIONER MOVES THIS COURT TO APPOINT COUNSEL TO CONCLUSIVELY
DETERMINE DISPUTED QUESTIONS OF THE VALIDITY OF PETITIONERS
COMMITMENT DOCUMENTS THAT HAVE BEEN USED TO ILLEGALLY DETAIN PET.
IN CUSTODY. PETITIONERS ENTIRE CASE HINGES ON A CONCLUSIVE
DETERMINATION OF THE FOREGOING DOCUMENTS.

PETITIONER WAS PREVIOUSLY DENIED COUNSEL (3-19-08 CIV NO.
3:08-CV-00467-JM-AJB) PRE-DISCOVERY TO DETERMINE THE VALIDITY OF
ABSTRACTS/COMMITMENT DOCUMENTS.

PETITIONER IS CURRENTLY BEFORE U.S.D.C. SAN DIEGO-CIV. NO.
08-CV-0965 BEN (LSP) TONY MABRY V LARRY SMALLS.

AUG 04 2008



1 COUNSEL SHOULD BE APPOINTED TO PETITIONER BECAUSE DISCOVERY
2 IS VERY IMPORTANT IN REGARDS TO BOLSTERING PETITIONERS CLAIMS.
3 PETITIONER CAN (NOT) DETERMINE (PRO SE) THE VALIDITY OF MULTIPLE
4 COMMITMENT DOCUMENTS.

5 (CITE) COOPERS & LYBRAND V LIVESAY, 437 U.S. 468 (1978);

6 (CITE) WEYGANT V LOOK, SUPRA, 718 F.2D AT 954;

7
8 28 USC 1915

9 BOAG V MACDOUGALL, 454 U.S. 364 (1982);

10
11
12
13
14 RESPECTFULLY SUBMITTED: *Long Matus*.

15 DATE: 7-31-08 :
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VERIFICATION

STATE OF CALIFORNIA
COUNTY OF IMPERIAL

(C.C.P. SEC. 446 & 2015.5; 28 U.S.C. SEC. 1746)

I, TONY MABRY DECLARE UNDER THE PENALTY OF PERJURY
THAT: I AM THE PETITIONER IN THE ABOVE ENTITLED ACTION;
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 30TH DAY OF JULY, 2008, AT CALIPATRIA
STATE PRISON, CALIPATRIA, CALIFORNIA 92233-5002

(SIGNATURE) Tony Mabry D-90950
(DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC. 1013 (a) & 2015.5; 28 U.S.C. SEC. 1746)

I, TONY MABRY AM A RESIDENT OF CALIPATRIA STATE PRISON, IN THE COUNTY
OF IMPERIAL, STATE OF CALIFORNIA; I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AMIAN
NOT A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX 5002,
CALIPATRIA, CALIFORNIA 92233-5002

ON 7-31, 2008 I SERVED THE FOREGOING:

2-PAGE MOTION FOR CANCEL BECAUSE OF PREVIOUS
DENIAL

(SET FORTH EXACT TITLE OF DOCUMENT IS SERVED)
ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY(S) THEREOF, ENCLOSED IN A SEALED ENVELOPE
(S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO
PROVIDED AT CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA 92233-5002

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO
ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 7-31, 2008

Tony Mabry
(DECLARANT/PRISONER)

TONY MABRY D-90150
P.O. Box 5004
CALIFORNIA, CA 92233
B4-138

DEAR CLERK: UNITED STATES CRT. OF APPEALS FOR NINTH CIRCUIT

PLEASE EXCUSE THE OUTER ADDRESSEE.

~~THE CIRCUMVENTING MAIL REPRISALS~~
CATHY A. COTTERSON, CLERK
U.S. COURT OF APPEALS
FROM PRISON OFFICIALS.

AUG 04 2008

FILED _____
DOCKETED _____

Thank you
JP

Tony Mabry
7-31-08